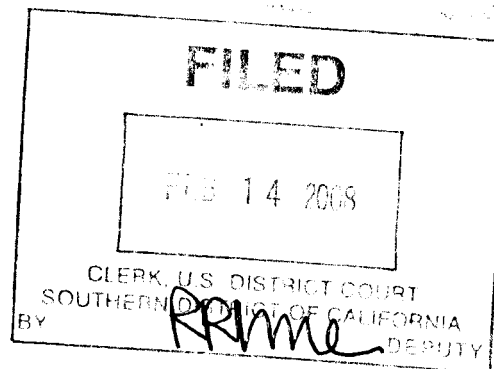


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6 Attorneys for Plaintiff
 7 UNITED STATES OF AMERICA



9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 TEODORO MAGADAN-PINEDA (1),)

15 Defendant.)

Magistrate Case No. 08MJ0233

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carla J.
 19 Bressler, Assistant United States Attorney, and defendant TEODORO MAGADAN-PINEDA, by
 20 and through and with the advice and consent of defense counsel, Timothy Scott, Esq., that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
 26 and (v)(II).

27 //

28 CJB:kmm:1/28/08

M/W's
on bond

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before February 25, 2008. *- assuming he is permitted to argue for downward adjustments and departures.*

4. The material witnesses, Eucario Arango-Jarquín, Carlos Rios-Jarquín and Angel Pacheco-Juarez, in this case:

- a. Are aliens with no lawful right to enter or remain in the United States;
- b. Entered or attempted to enter the United States illegally on or about January 23, 2008;
- c. Were found in a vehicle driven by defendant TEODORO MAGADAN-PINEDA in or near Pine Valley, California and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;
- d. Were paying unknown amounts or \$1,800 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,
- e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;
- b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

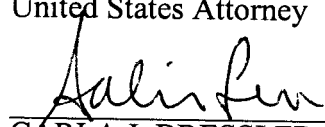
9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

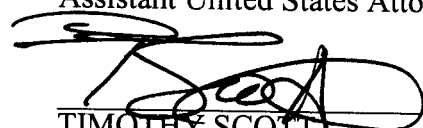
13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 Dated: 2/14/08.

17 
18 CARLA J. BRESSLER
19 Assistant United States Attorney

20 Dated: 2/11/08.

21 
22 TIMOTHY SCOTT
23 Defense Counsel for
24 TEODORO MAGADAN-PINEDA

25 Dated: 2-11-08.

26 
27 TEODORO MAGADAN-PINEDA
28 Defendant

29 
30 IT IS SO ORDERED.

31 